

**UNITED STATES DISTRICT COURT
DISTRICT OF MINNESOTA**

In re: LEVAQUIN PRODUCTS
LIABILITY LITIGATION

MDL No. 08-1943 (JRT)

This Document Relates to All Actions

**PRETRIAL ORDER #1 ON
PROCEDURAL ISSUES**

INTRODUCTION

The Judicial Panel on Multidistrict Litigation (“JPML”) has transferred actions in the above-captioned matter to this Court for coordinated and consolidated pretrial proceedings pursuant to 28 U.S.C. § 1407 as part of a nationwide litigation involving defendants’ anti-bacterial drug, Levaquin.

The Court will hold regularly scheduled status conferences. To minimize costs and facilitate manageable conferences, parties are not required to attend but shall be represented at the conferences. Parties with similar interests are expected to agree to the extent practicable on a single attorney to act on their joint behalf at the conference. A party will not, by designating an attorney to represent its interests at the conference, be precluded from other representation during the litigation; and attendance at the conference will not waive objections to jurisdiction, venue or service.

A summary statement of the case, no longer than four (4) pages, outlining the general facts and issues to be addressed in this litigation shall be submitted to the Court. Plaintiffs’ statement of the case was filed with the Court on October 17, 2008. Defendants shall file their statement of the case by November 7, 2008. In addition,

counsel shall submit a joint agenda three days prior to each status conference. The next status conference will be held on December 15, 2008 at 1:00 P.M.

Pursuant to this Court's jurisdiction over these actions, and the parties' agreement, this Court hereby enters the following order:

1 CONSOLIDATION OF RELATED ACTIONS.

Any other actions filed, whether filed directly in the United States District Court for the District of Minnesota or in any other United States District Court (whether by original filing or removal), that are related to this litigation are hereby consolidated into one action (the "Consolidated Action") for all pre-trial purposes, pursuant to Rule 42 of the Federal Rules of Civil Procedure and MultiDistrict Litigation ("MDL") Order dated June 13, 2008 [Docket No. 1], under 28 U.S.C. § 1407(a).

2. CAPTION OF CASE.

All orders, pleadings, motions and other documents served or filed in this Consolidated Action shall have the following caption:

**UNITED STATES DISTRICT COURT
DISTRICT OF MINNESOTA**

In re: LEVAQUIN PRODUCTS LIABILITY
LITIGATION

MDL No. 08-1943 (JRT)

This Document Relates to ["All Actions" or
specify by title and case number the individual
applicable cases if the document relates to less
than all of the consolidated cases.]

The original of this Order shall be filed by the Clerk and a copy thereof shall be filed in each subsequently filed or transferred action, which is related to and consolidated with this action. The Clerk of Court will maintain docket and case files under this caption, and pursuant to the procedures set forth in paragraph 3, below.

3. DOCKET AND FILING PROCEDURES.

A. Master Docket and File.

The Clerk will maintain a Master Case File, MDL No. 08-1943 (JRT). All orders, pleadings, motions and other documents will, when filed and docketed in the master case file, be deemed filed and docketed in each individual case to the extent applicable. The Master Docket is set up with the following parties: plaintiffs' Lead Counsel, plaintiffs' Liaison Counsel, plaintiff's Steering Committee, defendants' Lead Counsel and defendants' Liaison Counsel. These parties will appear on the docket report in MDL No. 08-1943 (JRT) as Lead Parties. The defendants and plaintiffs from the other cases will be added to MDL 08-1943 (JRT) as Notice-Only parties, but will not appear on the docket report.

B. Separate Dockets and Files.

The Clerk will maintain a separate docket for each case removed or transferred to this Court. Each such case will be assigned a new case number in this Court.

C. Notice of Appearance.

All parties shall file a Notice of Appearance in MDL No. 08-1943 (JRT) **only**.

The Notice of Appearance shall specifically list the individual case to which it applies.

The parties must also obtain a CM/ECF login and password. **See Attachment A.**

D. Filing.

All orders, pleadings, motions, and other documents that are normally filed in a civil action as required by Federal Rule of Civil Procedure 5 and that relate to an individual case shall be filed in both MDL No. 08-1943 (JRT) and the individual case. Those documents shall indicate in their caption the case number of the individual case to which they apply. Documents relating to all consolidated actions shall include in their caption the notation that they relate to “ALL ACTIONS” and shall be filed only in MDL No. 08-1943 (JRT).

E. Electronic Filing.

All documents filed by the parties in this MDL—with the exception of “initiating documents”—shall be filed electronically and in compliance with the District of Minnesota’s Local Rules and Electronic Case Filing Procedures. “Initiating documents” (e.g., original complaints, notices of removal), together with a civil cover sheet, and the filing fee, shall be submitted to the United States District Court for the District of Minnesota Clerk’s Office for filing. The Clerk’s office accepts initiating documents delivered to it in person or by e-mail and U.S. Mail. When filing documents relating to a particular case or cases, the documents shall be filed on the ECF system under both the

Master File and the particular case. A copy of the Court's electronic filing procedures is available at www.mnd.uscourts.gov. Initiating documents shall not be sent directly to the Chambers of Judge John R. Tunheim.

F. Motion Filing.

Any motion or other request for a ruling from the Court must be filed electronically as a motion on CM/ECF. Any opposition to a motion or any reply to a motion must be electronically linked to a motion on CM/ECF. In addition, the caption of any such document shall include a reference to the motion's exact title and/or docket number and, as required by paragraph 3.D above, be filed in both MDL No. 08-1943 (JRT) and the individual case, unless the motion applies to "ALL ACTIONS." The parties shall comply with the requirements of Rule 7.1 of the Local Rules for the District of Minnesota when filing both dispositive and non-dispositive motions. Absent a Court order, only those documents described in Local Rule 7.1 will be allowed to be filed with respect to a particular motion.

G. Stipulations.

Any stipulation by the parties must be filed on CM/ECF.

H. Courtesy Copies.

One courtesy copy of any document related to a motion shall be delivered to the Chambers of Judge John R. Tunheim (via U.S. Mail or hand-delivery to United States Courthouse, Suite 13E, 300 South Fourth Street, Minneapolis, Minnesota, 55415). The courtesy copies must contain a reference to the docket number of each particular

document and be **bound and tabbed**, if necessary, in a manner that is easy to use. Unbound copies or copies with binder clips only will not be accepted.

I. Proposed Orders.

Proposed orders shall be emailed to tunheim_chambers@mnd.uscourts.gov. All proposed orders shall be **unsigned** and must **not** be filed as any attachment or separate document on CM/ECF. The subject line on the e-mail message will contain an explicit reference to the Levaquin MDL and to the motion or other matter to which the proposed order pertains.

J. Chambers Email.

Other than proposed orders and agendas, Statements of Issues, and any other document specifically requested by the Court, no other documents shall be e-mailed to the chambers' e-mail address.

K. Briefing Schedules.

Unless the Court approves other briefing schedules, the briefing schedule for all motions filed must be made pursuant to the Federal Rules of Civil Procedure and the Local Rules for the District of Minnesota.

L. Service of Documents.

Service of documents in this MDL is made pursuant to Federal Rule of Civil Procedure 5. This Order shall be mailed to the persons named as Lead or Liaison Counsel herein. Said counsel are required to forward a copy of the Order to other

attorneys who have appeared in any action transferred to this Court. An updated and corrected service list shall be prepared as the litigation progresses. The Lead and Liaison Counsel for each party shall be responsible for establishing a service list and conferring with the Clerk of the Court to ensure that a Master Service List is established and kept current and which shall include all parties and counsel that may join this action. In addition, it is the responsibility of Plaintiffs' Liaison Counsel to ensure service of the Court's Orders upon any *pro se* plaintiffs.

4. APPLICABILITY OF THIS ORDER.

This Order applies automatically to all actions listed in the JPML's June 13, 2008 Transfer Order [Docket No. 1], as well as any other actions subsequently transferred to, removed to, or initiated in this Court, without the necessity of future motions or orders.

5. MOTION PENDING WHEN CASE IS TRANSFERRED TO THIS MDL.

Any motion that was pending before transfer to this MDL is not now pending. If a party wishes for a motion that was pending to be heard, that party must re-file the motion in this MDL.

6. RULES OF CIVIL PROCEDURE.

All actions listed in the Schedule A attached to the JPML's Transfer Order of June 13, 2008 [Docket No. 1], as well as any other actions subsequently transferred to or filed in this proceeding, shall be governed by the Federal Rules of Civil Procedure and the Local Rules for the District of Minnesota, and the Electronic Case Filing Procedures for the District of Minnesota. The parties are expected to be familiar with the Local

Rules for the District of Minnesota and the Electronic Case Filing Procedures for the District of Minnesota.

7. LIST OF AFFILIATED COMPANIES AND COUNSEL.

To assist the Court in identifying any issues or matters of recusal or disqualification, counsel will submit to the Court, no later than thirty (30) days of receipt of this Order, a list of all companies affiliated with the parties and all counsel associated in the litigation.

8. PROCEDURES

A. Admission of Counsel.

Attorneys admitted to practice and in good standing in any United States District Court are admitted *pro hac vice* in this litigation. Association of local co-counsel is not required. Each lawyer shall indicate the Court(s) before which he or she is admitted in a page included as an attachment to the complaint labeled “List of United States Federal Courts to which Counsel for Plaintiff is Admitted” and which shall be signed and dated by counsel under the statement, “I hereby certify that I am admitted to the preceding United States District Court(s) and that I have not been disbarred or suspended from practice before any of these Courts or any other United States District Court.” In the event that counsel has been disbarred or suspended from practice before any United States District Court, counsel shall set forth in the attachment the circumstances of such disbarment or suspension from practice. In addition to familiarizing themselves with the rules discussed above, all counsel are expected to familiarize themselves with the

American Bar Association's *Civil Discovery Standards*, as well as *The Manual for Complex Litigation 4th* (Federal Judicial Center 2004), which the Court and parties may be called upon to refer to as a resource in the case management of this litigation.

B. Pleadings.

Each defendant was granted an extension of time for responding by motion or answer to the complaint(s) until October 1, 2008 for all complaints served prior to September 4, 2008. Each defendant shall respond by motion or answer the complaint pursuant to the Rules of Federal Procedure for all complaints served after September 4, 2008.

C. Discovery.

Until further Order of this Court, the following Orders in *Voss et al. vs. Johnson*, Civil No. 06-3728, are incorporated herein by reference and shall govern these proceedings. This includes, but is not limited to, the Orders as follows:

1. September 7, 2007 Amended Stipulated Confidentiality Order
2. April 9, 2008 concerning depositions and search terms

The Clerk is directed to file these two documents in MDL No. 08-1943.

Pursuant to Fed. R. Civ. P. 5(d), discovery requests and responses will not be filed with the Court except when specifically ordered by the Court or to the extent offered in connection with a motion.

D. Preservation of Records.

Each party shall preserve all documents and other records, including electronic information, containing information potentially relevant to the subject matter of this litigation. Each party shall also preserve any physical evidence or potential evidence and shall not conduct any testing that alters the physical evidence without notifying opposing counsel and, unless counsel stipulate to the test, without obtaining the Court's permission to conduct the test.

E. Orders of Transferor Courts.

All Orders by transferor Courts imposing dates for pleadings or discovery are vacated.

F. Direct filing of Complaints.

1. Any lawyer admitted to practice before any United States District Court anywhere in the United States may file a case related to the above litigation directly in this Court without the necessity of associating with local counsel. No motion for *pro hac vice* is required under such circumstances. Each such lawyer shall make the filing required in paragraph 8.B.

2. Each complaint filed under this Order shall make reference to this Order in the complaint.

3. Local Rule 83.5(d) is hereby waived for such cases.

4. The filing of such a complaint subjects such lawyer to the Local Rules of this Court, particularly including but not limited to Local Rule 83.6.

8. ORGANIZATIONAL STRUCTURE.

A. Plaintiffs. By agreement, Plaintiffs have proposed and the Court hereby orders the following organizational structure for Plaintiffs:

Plaintiffs' Liaison Counsel:

Ronald S Goldser
Zimmerman Reed
651 Nicollet Mall, Suite 501
Minneapolis, MN 55402

Plaintiffs' Co-Lead Counsel:

Ronald S Goldser
Zimmerman Reed
651 Nicollet Mall Suite 501
Minneapolis, MN 55402

Lewis Saul, Chair of the
Plaintiffs' Steering Committee
Lewis Saul & Associates
183 Middle Street, Suite 200
Portland, ME 04101

Plaintiffs' Steering Committee:

Yvonne Flaherty
Lockridge, Grindal Nauen, P.L.L.P.
100 Washington Avenue South,
Suite 2200
Minneapolis, MN 55401

W. Lewis Garrison
Heninger, Garrison & Davis
2224 1st Avenue North
Birmingham, AL 35203

John P. Walsh
707 E. Harrison
P.O. Box 22418
Seattle, WA 98122-0418

Troy Giatras
The Giatras Law Firm
118 Capitol Street, Suite 400
Charleston, WV 25301

Robert Binstock
Reich & Binstock
4265 San Felipe, Suite 1000
Houston, TX 77027

Brian J. McCormick
Sheller, P.C.
1528 Walnut Street, 3rd Floor
Philadelphia, PA 19102

1. Responsibilities of Plaintiffs' Liaison Counsel.

- a. Service List:** Maintain and distribute to co-counsel and to Defendants' Liaison Counsel an up-to-date service list;
- b. Accept Service:** Receive and, as appropriate, distribute to co-counsel and *pro se* plaintiffs Orders from the Court and documents from opposing parties and counsel; and
- c. MDL Case File & Document Depository:** Maintain and make available to co-counsel and other Plaintiffs' counsel at reasonable hours a complete file of all documents served by or upon each party.
- d. Alternative Dispute Resolution:** At such time as alternative dispute resolution mechanisms are appropriate, Charles Zimmerman, Zimmerman Reed, 651 Nicollet Mall, Suite 501, Minneapolis, MN 55402, will be appointed chair of such committee. This structure may be modified from time to time by the Court, on motion by any Plaintiff or on the Court's own motion.

2. Responsibilities of the Plaintiffs' Co- Lead Counsel and Steering Committee.

Plaintiffs' Co-Lead Counsel and Steering Committee shall be responsible for coordinating the activities of Plaintiffs during pretrial proceedings and, shall:

- a.** Determine and present (in briefs, oral argument, or such other fashion as may be appropriate, personally or by a designee) to the Court and opposing parties the position of the Plaintiffs on all matters arising during pretrial proceedings;
- b.** Coordinate the initiation and conduct of discovery on behalf of Plaintiffs consistent with the requirements of the Federal Rules of Civil Procedure relating to discovery or any other subsequent order of this Court;
- c.** Conduct settlement negotiations on behalf of Plaintiffs, but not enter binding agreements except to the extent expressly authorized;
- d.** Delegate specific tasks to other counsel in a manner to ensure that pretrial preparation for the Plaintiffs is conducted effectively, efficiently, and economically;
- e.** Enter into stipulations, with opposing counsel, necessary for the conduct of the litigation;

- f.** Prepare and distribute to the parties periodic status reports;
- g.** Maintain adequate time and disbursement records covering services as lead counsel;
- h.** Monitor the activities of co-counsel to ensure that schedules are met and unnecessary expenditures of time and funds are avoided;
- i.** Perform such other duties as may be incidental to proper coordination of Plaintiffs' pretrial activities or authorized by further Order of the Court; and
- j.** Submit, if appropriate, additional committees and counsel for designation by the Court.

B. Defendants.

Defendants' Liaison Counsel:

Tracy Van Steenburgh
Halleland Lewis Nilan & Johnson
600 US Bank Plaza South
220 South Sixth Street
Minneapolis, MN 55402

Defendants' Lead Counsel:

William Robinson
Leclair Ryan
225 Reinekers Lane, Suite 700
Alexandria, VA 22314

John Dames
Drinker, Biddle and Reath
191 North Wacker Drive, Suite 3700
Chicago, IL 60606

9. PRIVILEGES PRESERVED.

No communication among Plaintiffs' Counsel or among Defendants' Counsel shall be taken as a waiver of any privilege or protection to which they would otherwise be entitled.

10. SPECIAL MASTER

For any matters where the Court requires assistance, the Court intends to utilize United States Magistrate Judge Arthur J. Boylan as a Special Master, and may utilize other individuals as Special Masters as may be necessary.

11. OFFICIAL COURT WEBSITE.

The Court has created and will maintain a web page devoted to the Levaquin Products Liability Litigation, which can be found at www.mnd.uscourts.gov/MDL-Levaquin. Through this website, parties may access the orders, minutes, the calendar, transcripts, forms used in this MDL, contact information for the Court's staff, Plaintiffs' Lead and Liaison Counsel, defendants' Lead and Liaison Counsel, frequently asked questions, and agendas and reports. Plaintiffs' Lead and Liaison Counsel and defendants' Lead and Liaison Counsel shall confer with the Court regarding the content of the website.

DATED: November 5, 2008
at Minneapolis, Minnesota.

s/John R. Tunheim
JOHN R. TUNHEIM
United States District Judge

MEMORANDUM re CM/ECF FILING IN LEVAQUIN MDL 1943**TO ALL COUNSEL in LEVAQUIN MATTERS****CM/ECF stands for Case Management, Electronic Case Files**

Before attempting electronic filing in these matters, please take time to read the U.S. District Court, District of Minnesota's Electronic Case Filing Civil ECF User's Manual and Civil ECF Procedures Guide posted on the U.S. District Court of Minnesota's website (<http://www.mnd.uscourts.gov/>). Once the website is accessed (<http://www.mnd.uscourts.gov/>), click on "Electronic Case Filing" on the left-hand side of the home page. Please review the User's Manual and Procedures Guide before filing a document. Please feel free to call the ECF helpdesk if you have questions (612-664-5155 or 1-866-325-4975). Please make certain that the attorney filing the document(s) has seen and approved of the document(s) before undertaking filing as you are using the attorney's bar number, login and password to file.

➲ **Obtaining an ECF Login Name and Password**

The Court's main website contains information on how to register for an ECF login and password. After accessing the website, click on "Registration form for e-filing-MDL attorneys" located in the Forms link on the left-hand side. To access the court's live ECF website, select Live ECF Link on the left-hand side of the Court's home page. Adding a second (or third) e-mail address may be done at the time of registration by listing the additional e-mail address(es) on the "additional e-mail" line on the original registration form. Under "Electronic Case Filing," there are directions as to how to add a secondary e-mail address if you are already registered.

➲ A separate PACER (Public Access to Court Electronic Records) login and password is necessary. It is likely that you, or your firm, already has a PACER account. If not, a PACER account can be established by contacting:

PACER SERVICE CENTER
 P.O. Box 780549
 San Antonio, TX 78278
 (800) 676-6856
<http://pacer.psc.uscourts.gov/>

➲ **IMPORTANT NOTE:** The court's ECF system gets bogged down with the many documents being uploaded, especially on Friday afternoons. It is suggested that you begin early (if you have many attachments you may want to begin by **11:30 a.m., Central Time**. If it is a simple filing without attachments, you can begin as late as 2:00 p.m., CT). If there are problems encountered, beginning early will help ensure that your filing will be timely. If you have technical problems, please contact the Court's Help Desk.*

- ➲ Please refer to Pretrial Order #1 on Procedural Issues for electronic filing questions. In Section 3.A., Master Docket and File., the Master Docket is set up with the following parties: Plaintiffs' Lead Counsel, Plaintiffs' Liaison Counsel, Defendants' Lead Counsel and Defendants' Liaison Counsel. These parties will appear on the docket report. Defendants and plaintiffs from the other cases will be added as MDL-Notice Only party types. All parties can be queried by selecting the Party when using CM/ECF Query. When filing documents in the Master Docket, select the appropriate party. If the filer is a member of the Plaintiffs' Liaison Counsel, select Plaintiffs' Liaison Counsel, for example. If the filer is a plaintiff in one of the individual cases, select the appropriate party, but note that the party type in the Master Docket case will be MDL-Notice Only. In addition, all parties must file a Notice of Appearance in the Master Docket after their initial filing in an individual case. When filing documents relating to a particular case or cases, the documents shall be filed on the ECF system under both the Master Docket and the particular case(s).
- ➲ All documents filed in the USDC's CM/ECF must be in "PDF" format (.pdf). The most widely used program that can convert from Word and/or Word Perfect to .pdf, is Acrobat. If you do not know how to change a document from Word to .pdf and move it to your export file, ask your Help Desk for assistance or our website for assistance.
- ➲ Each filing/upload of documents **cannot** be larger than **2MB**. If a document or attachments exceed 2MB, divide it/them into appropriate amounts and use page numbers for each section and file as separate attachments. (E.g.: File Attachment A, part 1 of 3, pp. 1 – 50; then file as separate attachment, Attachment A, part 2 of 3, pp. 51- 100; and also file as separate attachment, Attachment A, part 3 of 3, pp. 101 – 149.) When you create your Word/WP document in preparation to file it and/or when you convert it to a .pdf, your computer can show the size of the document/PDF.
- ➲ After e-filing your document(s), if appropriate, e-mail the judge the proposed order(s) only. **Proposed orders must be converted to WordPerfect ("WP") or Word format prior to sending them to the judge.** DO NOT send other papers to the judge's e-mail address. Reference the case or cases in the subject line and body of the e-mail if it is only a few cases. If the proposed order refers to all cases, state so. If the filing relates to many, but not all cases, put a list of cases to which the proposed order applies in the text of the e-mail and the moving party(ies)'s name(s) for reference. The email address is tunheim_chambers@mnd.uscourts.gov.
- ➲ After you complete your filing and obtain your proof of filing page, please make certain you **logout** of the ECF system.
- ➲ Note: Do not be alarmed if you see "CASE CLOSED" on an e-mail docket distribution from the court. It is only an internal matter for the court and does not affect the current docket in that case.

*If you encounter problems, please call **Court's Help Desk line 612-664-5155 or 1-866-325-4975**. If you reach a voice mailbox, leave a clear message including your name and telephone number. If you cannot complete your filing electronically, please see section L. Technical Failure in the Civil ECF Procedures Guide.

Page - 3 CM/ECF filing memo

If you inadvertently file a document in the *wrong case*, please refer to Section L. Correcting Docket Entries on page 20 of the Court's Civil ECF Procedures manual. However, if your *document* is wrong but filed in the correct case, you will have to file an amended version of your document.

New complaints, summonses & civil cover sheets cannot be filed and served using CM/ECF at this time, but they can be e-mailed to the clerk for processing and posting to CM/ECF. The email address for new cases is newcases@mnd.uscourts.gov.

If a filer does not know whether another party is a registered ECF user, they can go onto CM/ECF, select "Utilities," then "Mailing Information for a Case" and enter the case number and the information will appear.

Filing deadline shall be 11:59 p.m. Central Time. If your document goes through after Midnight p.m., it will be considered filed on the following day.

**UNITED STATES DISTRICT COURT
DISTRICT OF MINNESOTA
ELECTRONIC FILING REGISTRATION FORM FOR MDL ATTORNEYS**

This form is used by attorneys in MDL matters to register for an account on the District of Minnesota Electronic Filing System (ECF). Registered attorneys will have privileges to electronically submit documents and to receive electronic service of filings. By registering, attorneys consent to receiving electronic notice of filings through ECF. Only attorneys may register for an ECF account. The following information is required for registration:

PLEASE TYPE

Mr./Mrs./MS. (circle one)

First Name: _____ Middle Name: _____

Last Name: _____ If appropriate, circle one: Senior /Junior /II /III

Federal/State Court admission (what state): _____ Bar ID Number: _____

Firm Name: _____

Firm Address: _____

City: _____ State: _____ Zip Code: _____

Voice Telephone Number _____ Fax Number: _____

Internet Mail Address: _____

MDL action - indicate case number: _____

By submitting this registration form, the undersigned agrees to abide by all Court rules, orders and polices and procedures governing the use of the electronic filing system. The undersigned also consents to receiving notice of filings pursuant to Fed. R. Civ. P. 5(b) and 77(d) through the Court's electronic filing system. The combination of user ID and password will serve as the signature of the attorney filing the documents. Attorneys must protect the security of their passwords and immediately notify the court if they learn that their password has been compromised.

Signature of Attorney Registrant

Date

E-mail the completed form to: ecfhelpdesk@mnd.uscourts.gov with Subject line: Attention: ECF Registration – MDL